

§ 24.3

16 CFR Ch. I (1–1–09 Edition)

as made of leather so long as accompanied by clear disclosure of the non-leather parts. For example:

(1) An industry product made of top grain cowhide except for frame covering, gussets, and partitions that are made of plastic but have the appearance of leather may be described as: Top Grain Cowhide With Plastic Frame Covering, Gussets and Partitions; or Top Grain Cowhide With Gussets, Frame Covering and Partitions Made of Non-Leather Material.

(2) An industry product made throughout, except for hardware, of vinyl backed with cowhide may be described as: Vinyl Backed With Cowhide (See also disclosure provision concerning use of backing material in paragraph (c) of this section).

(3) An industry product made of top grain cowhide except for partitions and stay, which are made of plastic-coated fabric but have the appearance of leather, may be described as: Top Grain Cowhide With Partitions and Stay Made of Non-leather Material; or Top Grain Cowhide With Partitions and Stay Made of Plastic-Coated Fabric.

(f) *Ground, pulverized, shredded, reconstituted, or bonded leather.* A material in an industry product that contains ground, pulverized, shredded, reconstituted, or bonded leather and thus is not wholly the hide of an animal should not be represented, directly or by implication, as being leather. This provision does not preclude an accurate representation as to the ground, pulverized, shredded, reconstituted, or bonded leather content of the material. However, if the material appears to be leather, it should be accompanied by either:

(1) An adequate disclosure as described by paragraph (a) of this section; or

(2) If the terms “ground leather,” “pulverized leather,” “shredded leather,” “reconstituted leather,” or “bonded leather” are used, a disclosure of the percentage of leather fibers and the percentage of non-leather substances contained in the material. For example: An industry product made of a composition material consisting of 60% shredded leather fibers may be described as: Bonded Leather Containing

60% Leather Fibers and 40% Non-leather Substances.

(g) *Form of disclosures under this section.* All disclosures described in this section should appear in the form of a stamping on the product, or on a tag, label, or card attached to the product, and should be affixed so as to remain on or attached to the product until received by the consumer purchaser. All such disclosures should also appear in all advertising of such products irrespective of the media used whenever statements, representations, or depictions appear in such advertising which, absent such disclosures, serve to create a false impression that the products, or parts thereof, are of a certain kind of composition. The disclosures affixed to products and made in advertising should be of such conspicuousness and clarity as to be noted by purchasers and prospective purchasers casually inspecting the products or casually reading, or listening to, such advertising. A disclosure necessitated by a particular representation should be in close conjunction with the representation.

§ 24.3 Misuse of the terms “waterproof,” “dustproof,” “warpproof,” “scuffproof,” “scratchproof,” “scuff resistant,” and “scratch resistant.”

It is unfair or deceptive to:

(a) Use the term “Waterproof” to describe all or part of an industry product unless the designated product or material prevents water from contact with its contents under normal conditions of intended use during the anticipated life of the product or material.

(b) Use the term “Dustproof” to describe an industry product unless the product is so constructed that when it is closed dust cannot enter it.

(c) Use the term “Warpproof” to describe all or part of an industry product unless the designated product or part is such that it cannot warp.

(d) Use the term “Scuffproof,” “Scratchproof,” or other terms indicating that the product is not subject to wear in any other respect, to describe an industry product unless the outside surface of the product is immune to scratches or scuff marks, or is not subject to wear as represented.

(e) Use the term “Scuff Resistant,” “Scratch Resistant,” or other terms

indicating that the product is resistant to wear in any other respect, unless there is a basis for the representation and the outside surface of the product is meaningfully and significantly resistant to scuffing, scratches, or to wear as represented.

PARTS 25-227 [RESERVED]

PART 233—GUIDES AGAINST DECEPTIVE PRICING

Sec.

233.1 Former price comparisons.

233.2 Retail price comparisons; comparable value comparisons.

233.3 Advertising retail prices which have been established or suggested by manufacturers (or other nonretail distributors).

233.4 Bargain offers based upon the purchase of other merchandise.

233.5 Miscellaneous price comparisons.

AUTHORITY: Secs. 5, 6, 38 Stat. 719, as amended, 721; 15 U.S.C. 45, 46.

SOURCE: 32 FR 15534, Nov. 8, 1967, unless otherwise noted.

§ 233.1 Former price comparisons.

(a) One of the most commonly used forms of bargain advertising is to offer a reduction from the advertiser's own former price for an article. If the former price is the actual, bona fide price at which the article was offered to the public on a regular basis for a reasonably substantial period of time, it provides a legitimate basis for the advertising of a price comparison. Where the former price is genuine, the bargain being advertised is a true one. If, on the other hand, the former price being advertised is not bona fide but fictitious—for example, where an artificial, inflated price was established for the purpose of enabling the subsequent offer of a large reduction—the “bargain” being advertised is a false one; the purchaser is not receiving the unusual value he expects. In such a case, the “reduced” price is, in reality, probably just the seller's regular price.

(b) A former price is not necessarily fictitious merely because no sales at the advertised price were made. The advertiser should be especially careful, however, in such a case, that the price is one at which the product was openly

and actively offered for sale, for a reasonably substantial period of time, in the recent, regular course of his business, honestly and in good faith—and, of course, not for the purpose of establishing a fictitious higher price on which a deceptive comparison might be based. And the advertiser should scrupulously avoid any implication that a former price is a selling, not an asking price (for example, by use of such language as, “Formerly sold at \$_____”), unless substantial sales at that price were actually made.

(c) The following is an example of a price comparison based on a fictitious former price. John Doe is a retailer of Brand X fountain pens, which cost him \$5 each. His usual markup is 50 percent over cost; that is, his regular retail price is \$7.50. In order subsequently to offer an unusual “bargain”, Doe begins offering Brand X at \$10 per pen. He realizes that he will be able to sell no, or very few, pens at this inflated price. But he doesn't care, for he maintains that price for only a few days. Then he “cuts” the price to its usual level—\$7.50—and advertises: “Terrific Bargain: X Pens, Were \$10, Now Only \$7.50!” This is obviously a false claim. The advertised “bargain” is not genuine.

(d) Other illustrations of fictitious price comparisons could be given. An advertiser might use a price at which he never offered the article at all; he might feature a price which was not used in the regular course of business, or which was not used in the recent past but at some remote period in the past, without making disclosure of that fact; he might use a price that was not openly offered to the public, or that was not maintained for a reasonable length of time, but was immediately reduced.

(e) If the former price is set forth in the advertisement, whether accompanied or not by descriptive terminology such as “Regularly,” “Usually,” “Formerly,” etc., the advertiser should make certain that the former price is not a fictitious one. If the former price, or the amount or percentage of reduction, is not stated in the advertisement, as when the ad merely states, “Sale,” the advertiser must take care that the amount of reduction